

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 In re: ) MDL No.11md2258 AJB (MDD)  
11 SONY GAMING NETWORKS AND ) AND ALL MEMBER CASES  
12 CUSTOMER DATA SECURITY )  
13 BREACH LITIGATION ) NOTICE AND ORDER  
14 ) PROVIDING TENTATIVE RULING  
15 ) REGARDING DEFENDANTS'  
16 ) MOTION TO DISMISS  
17 ) PLAINTIFFS' FIRST AMENDED  
18 ) CONSOLIDATED CLASS ACTION  
19 ) COMPLAINT

20  
21 Currently before the Court, and set for hearing on October 18, 2013, is Defendants' motion to dismiss Plaintiffs' First Amended Consolidated Class Action Complaint. (Doc. No. 128.) Having considered the submissions of the parties, the Court hereby issues the following *tentative rulings* to assist Counsel prepare and structure their arguments for the scheduled hearing:  
22

23 **Standing as to SOE:**

24 Sony's motion to dismiss is **DENIED**, but the Court's order will provide  
25 clarification as to the claims Plaintiff Wright may assert.  
26

27 **Article III Standing:**

28 Sony's motion to dismiss is **DENIED**.

1 **Negligence Claims:**

2 Florida Claim: The claim is **DISMISSED** with prejudice for failure to allege  
3 cognizable injury.

4  
5 Missouri Claim: The claim is **DISMISSED** with prejudice for failure to allege  
6 cognizable injury.

7  
8 Ohio Claim: The claim is **DISMISSED** with prejudice for failure to allege  
9 cognizable injury.

10  
11 California Claim: The claim is **DISMISSED** without prejudice as to Plaintiff  
12 Howe based on failure to allege cognizable injury, and **DISMISSED** with  
13 prejudice as to Plaintiffs Howe and Plaintiff Johnson based on the economic loss  
14 doctrine.

15  
16 Massachusetts Claim: The claim is **DISMISSED** without prejudice for failure to  
17 allege cognizable injury, but dismissed with prejudice based on the economic loss  
18 doctrine.

19  
20 **Negligent Misrepresentation Claims:**

21 Florida Claim: The claim is **DISMISSED** with prejudice for failure to allege  
22 cognizable injury.

23  
24 Michigan Claim: The claim is **DISMISSED** with prejudice for failure to allege  
25 cognizable injury.

26  
27 New Hampshire Claim: The claim is **DISMISSED** with prejudice for failure to  
28 allege cognizable injury.

1 Ohio Claim: The claim is **DISMISSED** with prejudice because the claim does not  
2 apply to consumer transactions.

3  
4 Texas Claim: The claim is **DISMISSED** with prejudice for failure to allege  
5 cognizable injury.

6  
7 Missouri Claim: The claim is **DISMISSED** with prejudice for failure to allege  
8 cognizable injury.

9  
10 Massachusetts Claim: The claim is **DISMISSED** without prejudice for failure to  
11 allege cognizable injury.

12  
13 **Breach of Warranty Claims:**

14 The claims are **DISMISSED** with prejudice based on the choice-of-law clauses in  
15 the Parties' Agreements. Plaintiffs are granted leave to amend to plead breach of  
16 express warranty claims under California law.

17  
18 **Breach of Implied Warranty Claims:**

19 Florida Claim: The claim is **DISMISSED** with prejudice based on the disclaimer  
20 in the warranty.

21  
22 Michigan Claim: The claim is **DISMISSED** with prejudice based on the  
23 disclaimer in the warranty.

24  
25 Missouri Claim: The claim is **DISMISSED** with prejudice based on the disclaimer  
26 in the warranty.

1 New York Claim: The claim is **DISMISSED** with prejudice based on the  
2 disclaimer in the warranty.

3  
4 Massachusetts: The claim is **DISMISSED** with prejudice based on the UCC.  
5

6 New Hampshire Claim: The claim is **DISMISSED** with prejudice based on the  
7 disclaimer in the warranty.  
8

9 Texas Claim: The claim is **DISMISSED** with prejudice based on the disclaimer in  
10 the warranty.  
11

12 **Unjust Enrichment Claims:**

13 Florida Claim: The claim is **DISMISSED** with prejudice based on the existence of  
14 a valid contract.  
15

16 Michigan Claim: The claim is **DISMISSED** with prejudice based on the existence  
17 of a valid contract.  
18

19 Missouri Claim: The claim is **DISMISSED** with prejudice based on the existence  
20 of a valid contract.  
21

22 New Hampshire Claim: The claim is **DISMISSED** with prejudice based on the  
23 existence of a valid contract.  
24

25 Ohio Claim: The claim is **DISMISSED** with prejudice based on the existence of a  
26 valid contract.  
27  
28

1 Massachusetts Claim: The claim is **DISMISSED** with prejudice based on the  
 2 existence of a valid contract.

3  
 4 New York Claim: The claim is **DISMISSED** with prejudice based on the  
 5 existence of a valid contract.

6  
 7 Texas Claim: The claim is **DISMISSED** with prejudice based on the existence of  
 8 a valid contract.

9  
 10 **Consumer Protection Claims:**

11 UCL Claims: Plaintiffs do not have standing based on a benefit of the  
 12 bargain theory because the alleged misrepresentations did not  
 13 occur prior to, or at the time of the purchase of the PSPs, and  
 14 the omission claims are not sufficiently plead. However,  
 15 Plaintiffs Johnson and Howe have standing to the extent they  
 16 sustained unauthorized charges on their accounts. Sony's  
 17 substantive arguments for dismissal of the UCL claims are  
 18 **DENIED**, but Plaintiffs' claims are limited to alleged  
 19 misrepresentations regarding the use of "industry standard  
 20 encryption."

21  
 22 FAL: Plaintiffs do not have standing based on a benefit of the  
 23 bargain theory because the alleged misrepresentations did not  
 24 occur prior to, or at the time of the purchase of the PSPs, and  
 25 the omission claims are not sufficiently plead. However,  
 26 Plaintiffs Johnson and Howe have standing to the extent they  
 27 sustained unauthorized charges on their accounts. Sony's  
 28 substantive arguments for dismissal of the FAL claims are

1                   **DENIED**, but Plaintiffs' claims are limited to alleged  
2                   misrepresentations regarding the use of "industry standard  
3                   encryption."

4  
5           CLRA:           Plaintiffs do not have standing based on a benefit of the  
6                   bargain theory because the alleged misrepresentations did not  
7                   occur prior to, or at the time of the purchase of the PSPs, and  
8                   the omission claims are not sufficiently plead. However,  
9                   Plaintiffs Johnson and Howe have standing to the extent they  
10                  sustained unauthorized charges on their accounts. Sony's  
11                  substantive arguments for dismissal of the CLRA claims are  
12                  **DENIED**, but Plaintiffs' claims are limited to alleged  
13                  misrepresentations regarding the use of "industry standard  
14                  encryption."

15  
16          Florida DUTPA:   The damages claim is **DISMISSED** with leave to amend to  
17                   permit Plaintiffs Liberman and Schucher to plead causation and  
18                   actual damages as required under the FDUTPA.  
19                   The injunctive and declaratory relief claims are **DISMISSED**  
20                   with leave to amend to allow Plaintiffs Lieberman and  
21                   Schucher to plead the relief sought and why relief is still  
22                   necessary.

23  
24          Michigan CPA:   The damages claim is **DISMISSED** with leave to amend to  
25                   allow Plaintiff Mitchell to allege actual loss flowing from  
26                   reliance on Sony's alleged misrepresentations.  
27  
28

1 The injunctive and declaratory relief claims are **DISMISSED**  
2 with leave to amend to allow Plaintiff Mitchell to plead why  
3 relief is still necessary.  
4

5 Missouri MPA: Sony's motion to dismiss the damages claim is **DENIED**  
6 because under Missouri law, the alleged misrepresentations can  
7 occur before, during, or after the sale of the good or service.  
8 The injunctive and declaratory relief claims are **DISMISSED**  
9 with leave to amend to allow Plaintiff Munsterman to plead the  
10 relief sought and why relief is still necessary.  
11

12 N.H. CPA: Sony's motion to dismiss the damages claim is **DENIED**  
13 because actual damages are not required under the NHCPA.  
14 The injunctive and declaratory relief claims are **DISMISSED**  
15 with leave to amend to allow Plaintiff Kalled to plead the relief  
16 sought and why relief is still necessary.  
17

18 New York DPA: The damages claim is **DISMISSED** with leave to amend to  
19 allow Plaintiff Whyland to allege an injury caused by Sony's  
20 alleged misrepresentations.  
21 The injunctive and declaratory relief claims are **DISMISSED**  
22 with leave to amend to allow Plaintiff Whyland to plead the  
23 relief sought and why relief is still necessary.  
24

25 Ohio DTPA: The claim is **DISMISSED** with prejudice because consumers  
26 lack standing to bring claims under the DTPA.  
27  
28

1 Ohio CSPA: The damages claim is **DISMISSED** with leave to amend to  
2 allow Plaintiff Wright to allege that his “actual economic inju-  
3 ries” were “caused by” Sony’s alleged misrepresentations.  
4 The injunctive and declaratory relief claims are **DISMISSED**  
5 with leave to amend to allow Plaintiff Wright to plead the  
6 specific relief sought and why such relief is currently  
7 necessary.

8  
9 Texas DTPA: The damages claim is **DISMISSED** with leave to amend to  
10 allow Plaintiff Wilson to allege an injury caused by Sony’s  
11 alleged misrepresentations.  
12 The injunctive and declaratory relief claims are **DISMISSED**  
13 with leave to amend to allow Plaintiff Wilson to plead the  
14 specific relief sought and why such relief is currently  
15 necessary.

16  
17 **California Database Breach Act:**

18 Sony’s motion to dismiss is **DENIED** because whether or not Sony’s  
19 notice was unreasonable, or not expedient as required under §  
20 1798.82(a), is a factual question not properly determined on a motion  
21 to dismiss.

22  
23 **Violation of FCRA:**

24 Plaintiffs’ claims are **DISMISSED** with prejudice because none of  
25 the Defendants are “credit reporting agencies” as defined under §  
26 1681a(f).  
27  
28




**Partial Performance and Breach of the Covenant of Good Faith and Fair Dealing:**

Plaintiffs' claims are **DISMISSED** with leave to amend. Plaintiffs must provide additional information regarding the existence and formation of the alleged settlement agreement.

IT IS SO ORDERED.

DATED: October 10, 2013

  
\_\_\_\_\_  
Hon. Anthony J. Battaglia  
U.S. District Judge